

**Factual Basis**  
**United States v. David Metzger**  
**1:09-mj-339**  
**February 25, 2010**

**FILED**  
**FEB 25 2010**  
**U.S. DISTRICT COURT**  
**INDIANAPOLIS, INDIANA**

**Jane Doe 1: DOB 2000**  
**Jane Doe 2: DOB 2001**  
**Jane Doe 3: DOB 1999**  
**Jane Doe 4: DOB 2001**  
**Jane Doe 5: DOB 1998**  
**Jane Doe 6: DOB 1999**  
**Jane Doe 7: DOB 2000**

This case investigation started on October 27, 2009, because Jane Doe 1 was masturbating in her house. Her mother, asked why and Jane Doe 1 became extremely embarrassed and quiet and did not want to discuss it. Her mother asked if she could write it down and Jane Doe 1 said she could. Jane Doe 1, sometime later, brought a little slip of paper to her that said "naked videos" on it. Jane Doe's mother was concerned that something was going on at David Metzger's house. Ultimately, Jane Doe's mother brought Jane Doe 1 for a forensic interview at Tomorrow's Hope, a place where forensic interviews are done with children in the Kokomo and surrounding areas. After police interviewed Jane Doe 1, and her mother, they interviewed Jane Doe 2, Jane Doe 3 and Jane Doe 4, on October 27, 2009. Kokomo Police Department did a search warrant on October 28, 2009 supported by the girls giving statements regarding Metzger recording videos of them in his house and various instances of molesting them. Later, Jane Doe 5, Jane Doe 6, and Jane Doe 7 were all interviewed and they gave similar statements. The conduct involving producing still images and video images. The images appears to have occurred largely in 2008. Metzger has been collecting and possessing images for several years before that. Metzger is pleading guilty to producing pornography involving seven minor age girls and pleading to his possession of child pornography.

**Search Warrant and Interview on October 28, 2009:**

Kokomo Police Department obtained and executed a search warrant on October 28, 2009, in the evening hours. They called a number of agents from the ICAC task force for help. Kokomo Lt. Don Whitehead and ICE Agent Tom Rothrock did the interview. Other officers did the search. The significant items located included: (1) Computer tower with 4 hard drives installed, networked and encrypted; (2) Computer tower with 5 hard drives installed, networked and encrypted; (3) Laptop computer; (4) Desktop computer; (5) Thumbdrives; (6) CD's; (7) Videocameras and cameras; (8) Two hard copy picture printouts of Jane Doe 1 in his bedroom closet-illegal; (9) 2 toothbrush holders which had names of the children in the investigation written on them; (1) A drawer of swimsuits. Some robes were located, but nothing that looked like what girls wore in videos. No vibrators were located. Several firearms were located.

Metzger was interviewed by Lt. Don Whitehead and ICE Agent Tom Rothrock from about 6:38 p.m. to midnight. Then, he was interviewed again by Detective Cockrell at the Kokomo Police Department starting at about 12:10 a.m. about the touching conduct that would be Indiana state crimes.

During Metzger's interviews, he stated he was laid off from Chrysler in March 2008<sup>WHD</sup> and received money. He said he was unable to keep up with his bills and taxes. He has diabetes and high blood pressure. <sup>HARR-</sup>

Metzger stated that all of the computers in his residence were networked together and all were connected to the internet. Metzger stated he was a photographer and that the computer in the living room was used to edit photographs. Metzger stated that all the computers, except the laptop, were ones he had built himself. Metzger had encryption installed on at least two of the computers. During the first part of the interview, Metzger stated he would give the officers the password for the Windows sign-on but not the password for the encryption until he spoke with a lawyer. Metzger stated he was concerned about what was on the computers and, when asked for more details, stated he had pirated DVD's. He agreed to talk further with the exception being the content of the computers and not wanting to give the password to his encryption.

Metzger stated he graduated high school in 1974, and then was in the Navy until 1984. He stated he had a secret clearance, was an electrician, and had traveled to the Far East.

At about 7 p.m., Metzger observed as several officers were looking at the computer in the living room that was running without the encryption software running. Metzger stated that now the officers would see everything and agreed to continue talking but still not answer questions that he did not want to.

Metzger stated he had previously been employed with Borg Warner in Muncie and started in 1998 with Chrysler as an electrician. He lived alone.

Metzger explained his computer system with more detail: (1) He had four computers all networked together; (2) Some of the computers had multiple hard drives and one computer had four (1) one terabyte drives; (3) Several computers had external hard drives attached; (4) He possessed two NAS (networked attached storage) devices. He stated his internet service was through Comcast, a service he had for about 10 years. He used the internet for chatrooms, bill paying, to file for unemployment, e-mail, and software downloads.

Metzger stated that several people used the computers in the house including visitors but nobody had access to the encrypted areas. He said all of the computers used virus and spyware protection and all had firewall protection. Metzger stated he had numerous loose hard drives in the house in addition to several memory sticks and two portable USB drives. Metzger admitted owning three video cameras and two digital cameras. He said he took a lot of pictures at family events, sporting events, and reenactments. Metzger stated he had pictures on his computer from

the internet through newsgroups and mIRC (Internet Relay Chat).

Metzger admitted some of the pictures he had were inappropriate including nude pictures of soft core and hard core pornography. Metzger stated that the youngest would be age six. Metzger indicated he understood the federal definition of child pornography and that on his bedroom computer there were images that met this definition but were in a closed, encrypted container. Metzger again stated he would not give up the code to his encryption because it would not be in his best interest. Metzger admitted that he had taken pictures that met the definition of child pornography including still pictures and videos, and had touched at least three victims ages 8-12. Metzger admitted showing one girl how to use a vibrator. Metzger admitted penetrating Jane Doe 1's vagina with his tongue and having her place her mouth on his penis. Metzger stated he has had a sexual interest in young girls since the early 1980's when he made visits to the Philippines while in the Navy. He became interested after watching young teenagers (age 13) dance. He admitted having sex with 18 year old females in the Philippines. He admitted providing vibrators and swimsuits to the victims. He stated that the victims swam nude and he had on a swimsuit. These visits led to him masturbating after they left the house.

Metzger agreed to give the officers the encryption key to the password protected hard drives. The officers were able to access most of the computer storage.

At Kokomo PD, during the further interview, Metzger admitted that he collected child pornography and had for years. He stated he started taking pictures of girls in swimsuits in 2003. He stated he first took pictures on his own in February 2008 when Jane Doe 1 came to stay with her friend, Jane Doe 6. Metzger stated he took pictures of Jane Doe 6 wearing a leotard and then took four photographs of her in the living room which were full frontal nude pictures. He told Jane Doe 6 that she was pretty and looked like a model and to lay down on a sheet.

Metzger stated that Jane Doe 6 came back to his residence in the fall of 2008. Metzger stated he had a Cannon digital Ribel 6.5 megapixel camera. The girls were in the living room area playing "Truth or Dare" or "Spin the Bottle." He stated he had a dare that he could kiss Jane Doe 1. He kissed her naked breast and her vagina but denies using his tongue. Metzger said that Jane Doe 1 told him, "go ahead." Metzger said that he dared Jane Doe 1 to kiss him on his semi-erect penis, but she only "pecked" at it. He was nude, but initially had been wearing gym shorts. Metzger admitted to "orally stimulating" Jane Doe 1 and admitted that this made Jane Doe 6 uncomfortable. to watch. Later, during that sleepover, he took photographs of the girls and the girls somehow got his camera and took pictures of his nude buttocks. He said he deleted those nude photographs. He said he knew the situation made Jane Doe 6 uncomfortable because she asked him to delete the pictures he had taken of her and he told her he did, but actually, he saved them to his computer.

Metzger stated that Jane Doe 1's friend, Jane Doe 7, came over a few times. He said, "nothing happened." He said he watched the girls bathe together. He said it started out that Jane Doe 1 and Jane Doe 7 were skinny dipping and taking naked pictures. Then, Jane Doe 1 found



vibrators in the bedroom directly across from the bathroom. The girls had been wearing swimsuits that he had purposely purchased for them. He first described them as string bikinis and they used what he called "torpedo vibrators." One was purple and one was pink and white. He said he had gotten rid of them.

Metzger stated that in August 2008, he took a videotape of Jane Doe 1 and Jane Doe 7 when they were dancing with cards which had naked women on them. They were doing a dance video with vibrators. He said that Jane Doe 7 took her clothes on and off several times during the video and he thought "it was funny more than anything." He said he put this video on his computer and edited it. The girls later saw it and he later showed it to Jane Doe 3, Jane Doe 4, and another of their friends. The last time that Jane Doe 7 was at his house was in November 2008.

Metzger admitted that he had videotaped Jane Does 1, 2, 3, 4, 5, 6, and 7. Metzger admitted that he had physical sexual contact with Jane Does 1, 2, 4 and attempted contact with Jane Doe 3. He said Jane Does 2, 3, and 4 "flashed" people in the car when he had them in the car driving them back to his house.

Metzger discussed the hard copy picture of Jane Doe 1 with a pink vibrator. He stated that she was the only one at his home when this was taken. He believed it was between August and November 2008. He took this with his digital Cannon camera. Metzger said she was lying on a blanket in his bedroom. He directed her to "spread her labia" as he took the photograph. Since late 2008, Jane Doe 1 has not been allowed to come to his home.

Metzger admitted giving Jane Doe 3 cigarettes. He said he was concerned about her telling what was going on at his home and learned this through Jane Doe 1 and Jane Doe 1's older sister. Metzger admitted he showed Jane Doe 2 how to use the vibrator by touching her with it on her vagina. He said that Jane Does 2, 3, and 4 were all nude on his bed when this went on. After he suggested performing oral sex on Jane Doe 3 she spit in his face which extremely enraged him. He reiterated this fact several times during the interview that it made him very angry that she did this and he told the girls to go to bed. Metzger admitted to directing Jane Doe 2 to place her mouth on the vagina of Jane Doe 3. He admitted making Jane Doe 2 watch pornography and pornography of herself that was videotaped in his living room.

#### **Highlights of the computer forensic examination and search of videotapes:**

Metzger's storage capabilities were vast. He had well over 1 million pictures of child pornography and child erotica in addition to thousands of pictures of softball games, Christmases, weddings, etc. It appeared generally that anything nude child related was protected by encryption, and the hard drives or CD's which contained family pictures or non-chargeable pictures were separate not password protected.

Metzger possessed 14 videotapes of the Jane Does. The videotapes are taken from the angle where Metzger either holds the camera or sets it on a tripod in his living room. The girls dance and sing to videos, or are wrestling with each other. The girls are in various states of dress and are sometimes holding or using vibrators. Metzger's body and voice are often heard and seen to be confident that he is part of the videotaping. There is talk about the girls earning \$15 for doing the nude videos.

**Summary of charges and content:**

**Counts 1 and 2** charge the same video (serial number ending in 51D) with Jane Does 3 and 5 charged as separate victims. A sample of the content:

The video goes for 43 min. 52 secs. This one is illegal from the very beginning. Jane Does 3 and 5 are both wearing white bath robes only using vibrators by putting them into their vaginas while either standing up, laying down on the floor, or sitting on the couch. Metzger is working the camera because it focuses while they are both out of reach of it and we can hear his voice. At 45 secs, Metzger says, "It's recording." At 2:15, Jane Doe 5 says, "Don't let anyone see this." At 2:58 Metzger says, "It's not going to feel like the real thing. Starting at about 3:52, a discussion starts about Jane Does 2, 3, and 4 being in a bedroom previously with Jane Doe 4 licking the others and liking to be licked. At 6:33, Jane Doe 5 states "Can you go into another room" because he's a boy. Metzger says it's okay and he likes to watch. At 10:19, Jane Doe 3 acknowledges that it is videotaping Jane Doe 5 who is still on the couch with the vibrator. At 10:31, Metzger has obtained a piece of wrapped cheese and an ice cream bar and is eating both while in the view of the camera and appears to be watching both television and Jane Doe 5 who is still on the couch inserting the vibrator. At 11:55, there is an edit cut where both girls are on either end of the couch and Jane Doe 3 asks, "Can you see the weiner?" and Metzger says that it is videotaping. At 12:36 he walks near where they are on couch and helps them insert the vibrators. He says It doesn't have to be vibrating to get in.

**Counts 3 and 4** charge the same video (serial number ending in 34D) with Jane Does 1 and 7 charged as separate victims.

The video goes for 1 hr. 02 min. The first part is Jane Does 1 and 7 dancing and singing to the Chipmunks playing on the computer. They are nude sometimes (Jane Doe 1 nude nearly the whole time and Jane Doe 7 keeps getting dressed). They play with playing cards with nude adult women on them by throwing them up in the air and sticking them with their spit onto their bodies. At the beginning of the video, Metzger says, "It missed you stripping." Jane Doe 1 says "We'll have to start all over." They both get dressed and then Jane Doe 1 takes her clothes off and Jane Doe 7 takes her clothes off. Jane Doe 1 has gotten a vibrator and starts to play with it by putting in inside her buttocks and walking around. At 2:46, Jane doe 7 puts the vibrator near her crotch. At 4:02, Jane doe 1 is lying on the floor of the living room using the vibrator against her vagina and

appearing to insert it. The girls fight over which one had the purple vibrator first. At 5:12, the camera moves with neither girl having done this. Metzger's voice is heard once in awhile as though he's still present, but it is clear neither girl is working the camera most of the time. At 5:37, there is an edit cut. Jane Doe 7 is dressed and Jane Doe 1 is nude. Jane Doe 1 holds two vibrators in her hands and ultimately throws them in the air. At 7:40 she is playing on the floor doing a headstand with her legs spread. At 8:58 the camera has just focused on Jane Doe 1 who is sitting on a couch cushion with the vibrator underneath her vagina. Jane Doe 7 walks over to the camera area and says, "can you tie this?" meaning her pajama top and clearly talking to Metzger. At 18:00 or so, there are three Jane Does (an edit cut and cannot even tell if it is the same night) who are watching the computer and appears to be adult pornography because the little bit visible on the computer without their heads being in the way is an adult woman in lingerie. The girls are transfixed on the computer and are being taped watching this.

**Counts 5, 6, and 7** charge the same video (serial number covered with a label) with Jane Does 3, 1, and 4 charged as separate victims.

This video is 41 min. 3 secs. The video starts with Jane Doe 7 taping she and Jane Doe 1 and she is walking through the house taping different rooms narrating this. At 10:22, Metzger gets up off the couch and is mad because the girls have "messed with" the camera. At 10:36 there is an edit cut to Jane Doe 3 nude and Jane Doe 4 clothed. At 11:00, Jane Doe 3 says, "This is a part in video" as she is simulating sex standing behind Jane Doe 4. There is cussing. At 12:30, Jane Does 1 and 4 are tumbling in living room nude. Jane Doe 3 is nude at the computer. At 13:48, Jane Does 1 and 4 take off their clothes while a music video is playing on computer. At 14:18, Jane Doe 4 takes off her panties. At 14:40, Jane Doe 3 simulates sex on Jane Doe 4. At 15:06, Jane Doe 3 grabs her vaginal area and then she sits on Jane Doe 1 simulating sex. The girls look at camera frequently. At 15:34, there is an edit cut, all three girls are dressed, and Metzger says, "It's recording." At 16:49 after much dancing around, Jane Doe 1 says, "Time to strip." All of them take off their clothes. At 17:40, Jane Doe 1 says "Okay Shithead." At 17:50, Jane Doe 3 shows her crotch, and Jane Does 1 and 3 each have vibrators. The camera focuses and can see therefore someone else working camera besides girls. At 18:59, Metzger says, "I can't see, move back" and Jane Doe 3 moves back toward window lying on floor. At 20:01, Jane Doe 4 puts on vibrator underwear (straps holding on a vibrator onto her vagina—too big for her). At 20:33, Jane Doe 1 makes a point of showing her "boobs" "ass" and "cootchie" (all her words) as she touches each of those body parts and looks at camera.. At 21:07, Jane Doe 3 uses vibrator in vagina briefly. At 22:03, the girls are playing and Metzger says, "Aren't you going to finish the video?" At 23:00, Jane Doe 3 grabs her vagina and she and Jane Doe 1 wrestle, both nude. At 23:50, Jane Doe 1 shows her vagina and Metzger's voice can be heard.

**Counts 8, 9, and 10** charge the same video (serial number ending in 3AR) with Jane Does 3, 2 and 4 charged as separate victims.

This video is 18 min. 48 secs. Starts with Jane Doe 3 wearing purple lingerie chanting, "If you ain't got no money, take your broke ass home." They all three end of chanting this frequently throughout this video. All three dressed in lingerie. Metzger taking numerous

still pictures of Jane Doe 3 and she is nude. Metzger indicates he's already recording. At 1:58, Metzger says, "It's recording." At 2:15, Metzger talks sharply to Jane Doe 3 for being out of view of camera. At 2:46 he tells Jane Doe 3, "You're not in the video" because she's standing a little too close to it to be recorded. At 3:10 Metzger makes an offer to lick her and she says he can pretend lick her but he says he wants to lick it for real. At 4:40, Metzger tells Jane Doe 3 "If you're going to pose, you've got to hold it" because when she moves it gets out of focus (i.e. still pictures). At 5:38, Jane Doe 3 wears purple lingerie. Jane Doe 4 wears black lingerie. At 6:41, Jane Doe 3 simulates sex on Jane Doe 2. At 7:19, Jane Doe 3 licks Jane Doe 2's bottom. AT 7:50, Metzger again tells girl they have to stay back by the window. At 8:53, one asks how much they are going to get and he says, "About \$15." Then, one of them says, "because we're working hard." At 9:37, Metzger asks the girls if they are going to play with any of the toys. At 10:05, Jane Doe 3 talks to Metzger about his penis. at 10:39, Jane Doe 2 puts on black lingerie. At 17:46, Jane Doe 3 is left by herself because the other two have run off to play. She seems upset and hides under a comforter (they've been playing with this comforter frequently during video). Metzger "comforts" her by rubbing some part of her (she's under the comforter) and has his camera in his hand and says he's sorry the others don't want to play but offers her an additional \$5 if he can lick her.

**Counts 11 and 12** charged separate hard copy pictures that look like they were taken on different occasions, both of Jane Doe 1 using a sex toy.

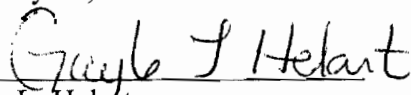
**Count 13** charge seven (7) still pictures of Jane Doe 3 with legs spread and posed that Metzger took during the video charged in Counts 8, 9, and 10.

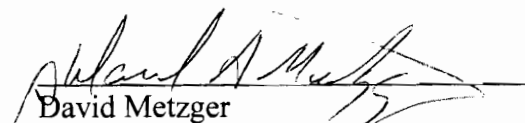
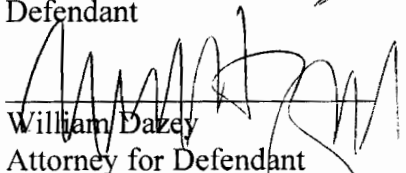
**Count 14** charges a picture called "(Jane Doe 3) flashing in car" of Jane Doe 3 depicting Jane Doe 3 in a vehicle with her pants pulled down and her vaginal area exposed as the focal point.

**Count 15** charges three pictures of Jane Doe 6 lying down with a blue background (lascivious exhibition of the genitals).

**Count 17** charges possession of numerous illegal pictures of various child pornography pictures, largely obtained from the internet.

February 25, 2010

  
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